

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

CINTEC INTERNATIONAL LTD.

Cintec House, 11 Gold Tops, Newport
South Wales, NP204PH, United Kingdom

and

CINTEC AMERICA INC.

5506 Connecticut Avenue, N.W., Suite 28
Washington, DC 20015

PLAINTIFFS,

v.

**JOHN HUMPHRIES PARKES (trading as
Dell Explosives), Redhall Mill, Colinton Dell
Edinburgh, EH14 1JF, Scotland**

DEFENDANT.

CASE NUMBER 1:03CV02393

JUDGE: Richard J. Leon

CIVIL ACTION No. _____

COMPLAINT

Plaintiffs by the undersigned attorneys for their Complaint state as follows:

THE PARTIES

1. Plaintiff Cintec International Ltd. is a company formed under the laws of England and Wales, having a principal place of business at Cintec House, 11 Gold Tops, Newport, South Wales, NP204PH, United Kingdom.

2. Plaintiff Cintec America Inc. is a Maryland corporation with a place of business at 5506 Connecticut Avenue, N.W., Suite 28, Washington, DC 20015.

3. Upon information and belief, Defendant John Humphries Parkes is a citizen of Scotland, residing at Redhall Mill, Colinton Dell, Edinburgh, EH14 1JF, Scotland.

4. Upon information and belief, Defendant singularly or collectively owns and controls United States Patent Nos. 4,836,079; 5,719,350; 5,728,967; 6,302,026; and 6,359,188 (hereinafter "the U.S. Patents").

JURISDICTION AND VENUE

5. This Court has jurisdiction over the subject matter of the Plaintiffs' request for a declaratory judgment pursuant to the Federal Declaratory Judgments Act, 28 U.S.C. § 2201 and 2202. This Court has jurisdiction over the subject matter of these claims pursuant to 28 U.S.C. § 1338(a), and venue is proper in this Court pursuant to 28 U.S.C. § 1391(d).

6. This Court has jurisdiction over the subject matter of Plaintiffs' claim of unfair competition arising under the Lanham Act and, in particular, 15 U.S.C. § 1125(a)(1)(B), pursuant to 28 U.S.C. §§ 1331, 1337(a), and 1338(b). Venue is proper in this Court pursuant to 28 U.S.C. § 1391(d).

7. This Court has personal jurisdiction over the Defendant as an alien patent owner pursuant to 35 U.S.C. § 293. Upon information and belief, Defendant has not filed with the United States Patent and Trademark Office a written designation stating the name and address of a person residing within the United States on whom may be served process or notice of proceedings. As set forth more fully herein, Plaintiffs among other relief seek to have this Court declare the U.S. Patents not infringed.

8. With respect to the claim made under the Lanham Act, this Court has personal jurisdiction over the Defendant pursuant to Fed. R. Civ. P. 4(k)(2) based upon his contacts with the United States, including through authorized acts of his agents and attorneys, as well as supplemental jurisdiction over said claim pursuant to 28 U.S.C. § 1367(a).

FACTS

9. Plaintiff Cintec International Ltd. manufactures a line of products collectively referred to as Waterwall™ devices. In essence, the devices comprise flexible-walled containers or bags for standalone or collective use that, when filled with fluid and placed in proximity to an explosive device, absorb the blast resulting from detonation.

10. In July 2003, the Defendant commenced proceedings against Plaintiff Cintec International Ltd. in a Scottish court alleging that the Waterwall™ devices infringe nine British patents (“the UK Patents”) owned by the Defendant. An express written allegation that certain of the U.S. Patents were infringed was also made in that action.

11. Upon information and belief, Defendant has alleged ownership and/or control of United States Patent No. 4,836,079, one of the United States Patents.

12. Both prior to and after the filing of the Scottish proceedings, Defendant or his agents contacted both Plaintiff Cintec International Ltd. and its customers alleging that the Waterwall™ devices infringe the Defendant’s patents, including the U.S. Patents, and threatened litigation with respect to the same.

13. In response to these threats and the prospects of defending a lawsuit in a foreign court, Plaintiff Cintec International Ltd. brought proceedings in an English Court seeking a

declaration of non-infringement and requesting an injunction to restrain Defendant from making further allegations of infringement with respect to the UK Patents.

14. In the English proceedings, Defendant asserted a counterclaim alleging that the Waterwall™ devices infringe the UK Patents.

15. On or about October 2, 2003, the English High Court of Justice issued a judgment that none of Plaintiffs' Waterwall™ devices infringes the UK Patents.

16. In the judgment, the English Court observed the threats of infringement in both the United Kingdom and the United States made by the Defendant and his agents, including to an international company called National Grid Transco Plc ("Transco"), a prospective customer of the Plaintiffs in both the UK and the United States. Upon information and belief, this contact with Transco constitutes an implicit threat of a U.S. infringement action.

17. Despite these threats, and believing fully that none of the U.S. Patents is infringed, Plaintiffs Cintec International Ltd. and Cintec America Inc. are desirous of expanding sales of Waterwall™ devices in the United States.

18. In this regard, Plaintiffs recently conducted tests and demonstrations of certain Waterwall™ devices at a military installation in Quantico Bay, Virginia, in an effort to engender demand for such devices in the United States and presently plans on continuing to make, have made, use, offer for sale, sell, and import such devices in the United States.

19. Upon being informed of the foregoing activities during the course of the English proceedings, Defendant and his agents alleged that Plaintiffs' activities in the U.S. and, in particular, at Quantico Bay, Virginia, constitute infringement of the U.S. Patents.

COUNT I
DECLARATORY JUDGMENT OF NON-INFRINGEMENT

20. Plaintiffs repeat, reallege, and incorporate the allegations set forth in paragraphs 1-19 above as if fully set forth herein.

21. Plaintiffs, believing that Defendant owns or controls the U.S. Patents, have a reasonable apprehension of a suit for patent infringement based on: (1) the past activities of the Defendant in alleging infringement of the U.S. Patents against both Plaintiffs and their customers, both in the United Kingdom and in the United States, including a direct written threat of infringement of certain of the U.S. Patents made in the Scottish proceeding; and (2) the history of foreign patent litigation between the Defendant and Plaintiff Cintec International Ltd. with respect to the Waterwall™ devices. Consequently, a real and actual controversy exists between the Plaintiffs and the Defendant with respect to the alleged infringement of the U.S. Patents by any or all of the Waterwall™ devices when made, used, offered for sale, sold, or imported in the United States.

22. Plaintiffs thus seek a declaration of non-infringement with respect to the Waterwall™ devices and the U.S. Patents.

COUNT II
DECLARATORY JUDGMENT OF INVALIDITY OF
CLAIMS 1, 2, 5, AND 6 OF U.S. PATENT NO. 6,302,026

23. Plaintiffs repeat, reallege, and incorporate the allegations set forth in paragraphs 1-19 and 21 above as if fully set forth herein.

24. Plaintiffs aver that, in addition to not being infringed by the Waterwall™ devices, at least claims 1, 2, 5, and 6 of U.S. Patent No. 6,302,026 (hereinafter "the '026 Patent") are invalid, void, and unenforceable under the Patent Laws of the United States and, in particular, Section 102(b) of the Patent Act, 35 U.S.C. § 102(b) (hereinafter "Section 102(b)").

25. The '026 Patent is generally directed to liquid-filled, explosion-suppressing structures. The basic embodiment disclosed comprises a water-filled "saddle bag" placed over a "rigid support member," which is more specifically described as a polystyrene block. A stacked arrangement is also disclosed, with blocks including internal cavities for receiving either a bag or, in the case where a bottom is provided, the liquid itself. An alternate embodiment is to form a "stockade" using these blocks, along with a "roof member." The roof member "may be manufactured from plywood, fibreglass, glass reinforced nylon, other plastic materials, or a combination of more than one of these materials" (col. 3, ll. 41-43). The roof member may "contain a closed length 24 of water-filled polyethylene layflat tubing" (col. 3, ll. 48-49). Additional water-filled bags may also be laid on each roof members. An alternative "roof member" including an interior with sections each for receiving a water-filled bag is shown in Figure 7, and the use of a net as a roof support member is also shown and described.

26. Independent claim 1 is directed to "[a]n explosion-suppressing structure comprising support walls, a separate roof comprised of at least one member, at least one of said members being a support member and at least one of said members being a rupturable liquid-filled container, the liquid being aerosolizable responsive to an explosion that ruptures

said at least one container.” Dependent claim 2 further requires that the “liquid filled container” of the roof member includes “at least one rupturable liquid-filled bag.” Dependent claim 5 requires that the rupturable liquid container comprises “at least one liquid-containing hollow body of uniform cross-section.” Dependent claim 6 requires a roof member in the form of a liquid-filled bag having a hollow body of uniform cross-section.

27. A review of the prosecution history leading to the issuance of the ‘026 Patent reveals that the Defendant’s Patent Counsel, William Hogg, in attempting to overcome rejections made by the Examiner based on the prior art, argued that the invention of claim 1 included a “rigid” support member. However, the word “rigid” was never added to this claim by way of amendment, either at that time or later during prosecution. The Examiner nevertheless allowed the ‘026 Patent to issue.

28. Several references qualifying as prior art under Section 102(b) establish that one or more of claims 1, 2, 5, and 6 of the ‘026 Patent are anticipated and thus invalid. These include: (1) U.S. Patent No. 4,836,079 to Barrett, which issued on June 16, 1989 (“the ‘079 Patent”); (2) U.S. Patent No. 5,719,350 to Parkes, which issued on February 17, 1998 (“the ‘350 Patent”); (3) British Patent No. 1,536,555 which published on December 20, 1978 (“the ‘555 Patent”); and (4) an article entitled Mitigation of Confined Explosion Effects by Placing Water in Proximity of Explosives, Keenan, W.A., et al., 25th Department of Defense Safety Seminar, August 1992 (the “Explosion Mitigation Article”).

29. The ‘079 Patent, which was cited by the Examiner against claim 1 as originally presented, shows an explosion-suppressing structure having support walls and a separate roof.

The roof comprises a rupturable bag filled with an “aerosolizable” liquid (water) qualifying as a support member. The roof is not “rigid,” but again, such is not required by claim 1 or claim 2. Since the ‘079 Patent teaches each and every limitation of claims 1-2 and plainly qualifies as prior art under Section 102(b), such claims are invalid as anticipated.

30. Defendant’s ‘350 Patent, also before the Examiner, discloses an explosion-suppressing structure comprising support walls and a separate roof comprised of at least one member. The “at least one” of “said members” is a support member and a rupturable liquid-filled bag having a uniform cross-section. The liquid (water) is also aerosolizable responsive to an explosion that ruptures the container. The ‘350 Patent thus teaches each and every limitation of claims 1, 2, 5, and 6 and plainly qualifies as prior art under Section 102(b).

31. Newly located prior art references not considered by the Examiner during prosecution of the application that matured into the ‘026 Patent include the British ‘555 Patent and the Explosion Mitigation Article. The ‘555 Patent shows an explosion suppressing device with spaced walls and a non-separate, rigid (wood or plastic) roof. The roof is “comprised of at least one member” in the form of a “rupturable liquid-filled container” supporting the liquid. As is clearly shown in Figure 3b, the liquid is “aerosolizable responsive to an explosion that ruptures said at least one container.”

32. Page 338 of the Explosion Mitigation Article depicts an “explosion suppressing structure” including walls and a separate roof comprised of a “support member” including a bag filled with an aerosolizable fluid and having a uniform cross-section. Upon information and belief, this article *prima facie* qualifies as a publication printed more than one year before the

filing of the application that matured into the '026 Patent and, thus, constitutes prior art under Section 102(b).

COUNT III
VIOLATION OF SECTION 43(A) OF THE LANHAM ACT

33. Plaintiffs repeat, reallege, and incorporate the allegations set forth in paragraphs 1-19 above as if fully set forth herein.

34. This claim arises under The Trademark ("Lanham") Act of 1946, Title 15, United States Code, § 1051, *et seq.*, and particularly under 15 U.S.C. § 1125(a)(1)(B). This claim is to redress the use in commerce of false descriptions and representations by the Defendant and his agents.

35. Plaintiffs have invested considerable resources to develop goodwill with their customers, who have come to view them as suppliers of high quality blast protection structures, as well as various other devices, throughout the world.

36. Upon information and belief, Defendant and his agents have made false or misleading factual representations in commerce regarding the nature and characteristics of Plaintiffs' devices by claiming to prospective U.S. customers of said devices that certain of the U.S. Patents are infringed thereby. But for the aforementioned activities, Plaintiffs' entry into the nascent U.S. market for such devices would have been quicker and preliminary sales would have been substantially greater since interested customers (including the U.S. government) would have elected to purchase from Plaintiffs as a non-infringing source.

WHEREFORE, Plaintiffs demand the following:

1. A judgment declaring that making, having made, using, offering for sale, selling, or importing Plaintiffs' Waterwall™ devices in the United States does not infringe any claim in any of Defendant's U.S. Patents.

2. For a judgment declaring at least claims 1, 2, 5, and 6 of United States Patent No. 6,302,026 invalid, void, and unenforceable.

3. For a permanent injunction enjoining the Defendant, his successors and assigns, and his officers, agents, servants, employees, attorneys and all other persons acting in concert or participation with him from falsely asserting to Plaintiffs' customers or anyone else that the Waterwall™ devices infringe any of the U.S. Patents.

4. For an award of damages in an amount yet to be determined in order to compensate Plaintiffs for the violation of Section 43(a) of the Lanham Act by the Defendant.

5. For an award treble the amount of actual damages suffered by Plaintiffs as a result of said acts of unfair competition and false representation.

6. For an award of reasonable attorney's fees to compensate Plaintiffs pursuant to 15 U.S.C. § 1117.

7. An assessment of the costs of this action against the Defendant.

8. An award of Plaintiffs' attorney's fees in bringing this action.

9. Such other relief as this Court may deem just and proper.


JURY DEMAND

Plaintiffs hereby demand a jury as to all issues triable herein.

Date: November 19, 2003

Respectfully Submitted,

**CINTEC INTERNATIONAL LTD. and
CINTEC AMERICA INC.**



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